

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALEXANDRA MATALAVAGE,
Plaintiff,

vs.

20-CV-1254-WMS-LGF

ATTORNEY'S AFFIRMATION IN
SUPPORT OF PLAINTIFF'S
MOTION TO EXTEND DEADLINES

SHERIFF OF THE COUNTY OF NIAGARA,
ET AL.,
Defendant.

State of New York)
County of Erie)

Anna Marie Richmond, an attorney admitted to practice in the State of New York,
affirms under the penalty of perjury:

1. I am an attorney for the Plaintiff in the above-captioned matter; I make this affirmation in support of Plaintiff's Motion for an extension of the fact discovery deadlines, the mediation deadline, and the dispositive motion deadline herein.

2. The parties exchanged Initial Disclosures on February 17, 2021. Thereafter, Defendants served written discovery requests on April 30 2021 and Plaintiff served written discovery requests on May 19, 2021

3. Pursuant to mutually agreed-upon extensions, and an Amended Scheduling Order (Item No. 32), the parties served responses to the written discovery requests on October 22, 2021.

4. Defendants' initial production of documents was comprised of 2719 pages of documents; Plaintiff's initial production of documents was comprised of 2174 pages.

5. On January 28, 2022, Plaintiff's counsel sent a letter to Defendants' counsel

objecting to certain of Defendants' responses, and clarifying, narrowing and focusing certain of Plaintiff's Interrogatories and Document Requests in response to Defendants' objections.

6. On January 28, 2022, the discovery deadline was March 31, 2022, and the deadline for filing motions to compel was February 28, 2022. Item No. 32.

7. Defendants were unable to complete their response to Plaintiff's January 28, letter by the end of March, and the parties were unable to schedule depositions.

8. On March 30, 2022, Defendants moved, on consent, for a further extension of the Case Management Order. Item 33.

9. The Court granted the motion, Item 35, and established, *inter alia*, a fact discovery deadline of August 31, 2022.

10. On June 8, 2022, Defendants responded to Plaintiff's January 28, 2022 letter, turned over more documents, and advised that additional documents that would be forthcoming.

11. Defendants produced a privilege log and additional materials on July 1, 2022.

12. Plaintiff served Requests to Admit upon Defendants on July 29, 2022.

13. Defendants deposed Plaintiff on August 5, 2022, at which time, Defendants' counsel advised that additional document requests would be forthcoming upon receipt of the transcript of the deposition.

14. Plaintiff served a Second Request for Production of Documents upon Defendants on August 10, 2022.

15. Plaintiff deposed Defendant Payne and three of Defendants' witnesses on August 18 and 19, 2022.

16. After deposing the first three individuals, Plaintiff and her counsel determined that it would be necessary to depose Defendant Filicetti, and served a notice of deposition for

Defendant Filicetti upon Defendants' counsel on August 19, 2022.

17. On Monday, August 22, 2022, the undersigned and Defendants' counsel exchanged emails about scheduling Defendant Filicetti's deposition, and selected the first mutually acceptable date, namely October 7, 2022.

18. Counsel also "discussed," via email, an extension of the case management order.

19. Plaintiff's counsel prored the following new dates:

- a. All fact discovery shall conclude on October 31, 2022;
- b. All motions to compel fact discovery shall be filed on or before September 27, 2022;
- c. Dispositive motions, if any shall be filed no later than January 3, 2023;
- d. Mediation sessions may continue until December 13, 2022;
- e. Final pre-trial conference in the absence of dispositive motions to be scheduled at the Court 's discretion.

20. Defense counsel requested that we extend the deadlines for responding to the Requests for Admission and the Second Request for Production of Documents to September 21, 2022.

21. Plaintiff's counsel agreed to the request.

22. Defendants' counsel agreed to all of the dates proposed by Defendants except for the dates for motions to compel fact discovery and the dispositive motion deadline.

23. Defendants' counsel pointed out that the deadline for motions to compel has already past, and stated that Defendants do not agree to extending that deadline.

24. Defendants' counsel requested that the dispositive motion deadline be set at either December 22, or January 13, 16, or 17, or some other date that is before or after the week of

January 1, to accommodate counsel's schedule.

25. Regarding Defendants' objections to Plaintiff's proposed dates:

- a. As Defendants have not yet provided their formal request for documents identified at the August 5 deposition of Plaintiff to Plaintiff's counsel, and in view of the parties' agreement that Defendants' deadline to respond to Plaintiff's Second Request for Production of Documents will be extended to September 21, 2022, Plaintiff asserts that it is reasonable to set the deadline for motions to compel at September 27, 2022 – less than a week after the currently-agreed-upon deadline for Defendants' responses.
- b. Plaintiff does not object to Defendants' Counsel's request for a dispositive motion deadline that is not during the week of January 1, 2023, and suggests to the Court that extending Defendants' deadline to January 13, 2023, will result in neither party having to address dispositive motions during the winter holiday season.

26. As the above description of the history of discovery in this matter demonstrates, the parties have diligently engaged in discovery for the past twenty months, and are requesting a very short extension of the Case Management Order to finalize already-scheduled outstanding discovery.

27. No party will be prejudiced by the requested extensions.

WHEREFORE, Plaintiff respectfully requests that the Court extend the deadlines set forth in Item No. 35 as follows:

- All fact discovery shall conclude on October 31, 2022;

- All motions to compel fact discovery shall be filed on or before September 27, 2022;
- Dispositive motions, if any shall be filed no later than January 13, 2023;
- Mediation sessions may continue until December 13, 2022;
- Final pre-trial conference in the absence of dispositive motions to be scheduled at the Court 's discretion.

Respectfully submitted,

/s/ Anna Marie Richmond
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Dated: Buffalo, New\ York
August 23, 2022